



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Polar Power, Inc.

File: B-270536

Date: March 18, 1996

Arthur D. Sams for the protester.

Vera Meza, Esq., and Brian Toland, Esq., Department of the Army, for the agency.
Robert C. Arsenoff, Esq., and Paul E. Jordan, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Sole source award is unobjectionable where the contracting agency has an urgent requirement for generators and has reasonably determined that there is insufficient time to approve additional sources, and the urgency did not arise as the result of a lack of advance planning.

DECISION

Polar Power, Inc. protests the proposed sole source award of a contract for 2 kilowatt (kW) generator sets to Mechron Energy Systems, Ltd. by the Department of the Army. Polar principally alleges that the agency lacks sufficient justification for a sole source procurement.

We deny the protest.

On November 3, 1995, the agency published an announcement, DAAK01-96-R-0031, in the Commerce Business Daily (CBD), stating that it was awarding a sole source contract to Mechron for 600 2kW alternating current (AC) generator sets and 50 2kW direct current (DC) generator sets for delivery beginning in February 1996 and ending in April of that year. The announcement further provided that the acquisition was "under urgent and compelling circumstances" and that the "time required for approval of new suppliers is such that award and delivery cannot be delayed pending approval of new sources." The announcement also indicated that the government intended to issue a fully competitive solicitation for additional sets in January 1996. The acquisition was supported by a justification and approval (J&A) prepared pursuant to 10 U.S.C. § 2304(c)(2) (1994).

In 1988 and 1989, the Army began to experience problems with the operational readiness of its field-deployed standard 3kW and less than 3kW (.05kW and 1.5kW) generator sets because they were becoming obsolete and unreliable. In 1989, a

contract was let for new 3kW Tactical Quiet Generators (TQG) to replace the standard 3kW units. As reported by the agency, considerable technical difficulties arose during contract performance. In 1990, the agency began a market survey regarding less than 3kW generators to determine if commercially available generators could meet military requirements. Polar Power participated in the survey. The results of the survey were published in November 1991 with the conclusion that commercially available generators could not meet the government's requirements. In March 1992, a draft solicitation was issued for a two-step research and development (R&D) program aimed at designing a 3kW generator capable of meeting the agency's needs; that solicitation was canceled when funding became unavailable.

Following the cancellation of funding, the Army sought alternative solutions for obtaining a 2kW generator set which met military standards and could be used for essentially the same applications as the 3kW sets. Based on a survey of domestic engine technology conducted in 1993, which did not include Polar Power, the agency concluded that commercial generator sets that met user requirements were still unavailable. In January 1994, the Army submitted a request to test Mechtron generator sets under the Foreign Comparative Testing (FCT) program since the Canadian National Defense (CND) had previously tested and approved those sets.¹ Approval for testing was granted in October of 1994. The Army procured 12 sets and conducted FCT testing for a 7-month period ending in September 1995.

On March 23, 1995, the 1989 3kW TQG contract was terminated for the convenience of the government due to reported technical difficulties. The Army developed another 3kW acquisition strategy using a multi-step R&D approach, which will result in deliveries of 3kW generators beginning in fiscal year (FY) 2000. In February 1995 the Army, through a contractor, surveyed members of the Electrical Generating Systems Association (EGSA), the official trade association for electrical generating systems manufacturers, to determine the commercial availability of generators meeting the military's requirements. As a result of that survey, the Army concluded that suitable generators were not readily available.

The agency published its November 3, 1995, sole source announcement in the CBD for 2kW generator sets, after it was informed that Mechtron's sets had passed the CND FCT testing. The Army determined that the combat readiness of such units as the Rapid Deployment Force urgently required the delivery of 650 generator sets on a 3-month schedule commencing in February 1996. These urgent requirements were broken out for sole source acquisition from Mechtron, with the remainder of the 8,400 sets eventually needed by the Army to be acquired under competitive

¹Polar Power had attempted to have its products tested by the CND but was refused for a lack of Canadian content.

procedures using specifications developed by the CND and modified by the Army as the result of the FCT testing.² The specifications in this competitive procurement include a requirement for first article testing (FAT), which the Army estimates will take between 6 and 10 months. Based on the CBD notice of the agency's plans to make the award to Mechtron, Polar Power protested.³

Other than competitive acquisitions are permitted where the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if competition were not restricted. 10 U.S.C. § 2304(c)(2). The competition may be limited to one firm if the agency reasonably determines that only that firm can perform the work in the available time. Forster Enters., Inc., B-237910, Apr. 5, 1990, 90-1 CPD ¶ 363. Award of a contract under these circumstances may not, however, be made where the urgent need for the requirement has been brought about by a lack of advance planning by contracting officials. 10 U.S.C. § 2304(f)(5)(A).

As a preliminary matter, there is no dispute with the Army's finding that the operational readiness posture of military units is being adversely impacted by the exceptionally low reliability and increasing unsupportability of currently fielded generators. There is also no dispute that 650 generator sets are required between February and April of 1996. Further, the protester does not directly address the agency's finding that only Mechtron has the production capacity to supply tested generators within that time frame in light of the agency's conclusion that other manufacturer's offered generator sets will have to undergo extensive FAT testing before the Army can ascertain their acceptability. Rather, Polar Power has cast its protest in terms of the adequacy of the market surveys referenced by the Army in support of its determination and the adequacy of advanced planning undertaken by the agency to avoid the present urgency.

Three surveys are referenced in the J&A: the 1990-91 survey in which Polar Power participated and under which the protester's generator sets were tested over a considerable period of time without favorable results; the 1993 survey which was limited to engine manufacturers; and the March 1995 survey of EGSA members

²Polar Power now states that the total number of generators to be competitively procured by the Army has been reduced so that the number to be sole sourced to Mechtron will represent 36 percent of the total agency requirements. Particularly given the recent nature of this change, it does not change our analysis.

³Citing Federal Acquisition Regulation (FAR) § 6.302-1, Polar Power alleged that this is an initial acquisition which may not be made without full and open competition. This allegation is misplaced as the cited authority simply does not restrict the use of other than competitive procedures in the manner suggested by the protester.

which was conducted at the same time the 3kW TQG contract was terminated. It was at this point that the agency determined to use the 2kW generator sets to fill the gap until the new 3kW program reached the delivery stage in fiscal year 2000. Although Polar Power is critical of all three surveys, the first two surveys are largely irrelevant to the disposition of this protest, inasmuch as neither of the initial two surveys had as its purpose the justification of the September 1995 decision to purchase 2kW generators on a sole source basis. Thus, our analysis focuses on the adequacy of the 1995 market survey conducted when the need for 2kW generator sets became urgent.

Polar Power principally objects to being eliminated from the survey because it had expressed interest in receiving revised specifications for the 3kW TQG program and is otherwise critical of the type of data solicited in the survey. While Polar Power had expressed interest in other generator requirements, including both AC and DC generators, the protester, so far as the Army was aware, does not regularly manufacture AC generator sets. The Army's understanding is confirmed by Polar Power's statement that DC generators are its "specialty," but that it had the "capability" of purchasing AC alternator components for inclusion in an AC generator set. Where, as here, an agency has a requirement for commercially available AC generator sets, it is reasonable for it to survey manufacturers who regularly produce such sets rather than manufacturers of DC generators. Thus, the Army's consulting EGSA—a major trade association—for a list of manufacturers, and then contacting 27 manufacturers, 18 of which participated in a follow-up questionnaire program, is eminently reasonable. The fact that the protester was not on the association's list does not render the survey unreasonable.

Polar Power also argues that the urgency was the result of a lack of advance planning since 1989. In this regard, the protester states that the agency should not have relied on the 3kW TQG contract for satisfying its field generator requirements for as long as it did. In Polar Power's view, the Army should have terminated the contract as soon as delivery problems arose and other offerors should then have been given an opportunity to have their sets tested and thus would have avoided the present urgency.

Polar Power's speculation that the contract was not properly administered does not provide a basis for sustaining this protest. While Polar Power may assert that the agency acted unreasonably, there is nothing in the record beyond this assertion to demonstrate that the agency unreasonably relied on the 3kW TQG program to meet its needs for generators to replace those that were becoming obsolete. The program, although it eventually failed in March 1995, in fact reflects advance planning, not the lack thereof.

The record establishes that the critical nature of the urgency necessitating the protested sole source acquisition arose in March 1995 upon the termination of the

3kW TQG contract. Thereafter, a long-term TQG program was developed to serve long-term needs, an adequate market survey was conducted, and FCT continued with one of its aims being the development of competitive specifications for 2kW generators.

The record further establishes that as of the time the J&A was issued, only Mechtron had a tested 2kW generator set. With respect to the 600 AC generators (out of 650 total) to be purchased sole source, even Polar Power does not represent that its AC generator has been tested⁴. As we observed above, the protester in fact states only that "it can design its own alternator specifically to meet military requirements." There is no dispute that 650 generators are needed between February and April of 1996 and, from the length of time it took to qualify Mechtron (7 months), it is reasonable to conclude that only that firm can satisfy the urgent need for tested generator sets. Under the circumstances, we have no basis to question the agency's plan to acquire this limited quantity from Mechtron and to complete the balance of its generator requirements using competitive procedures.

The protest is denied.

Comptroller General
of the United States

⁴Polar Power submitted a report from the Redstone Technical Test Center, dated February 22, 1996, which reflects that the protester's DC 2.2kW generator had been tested. This evidence in no way shows the agency's sole source decision made in November 1995 was not reasonably based.